

DRAFT
Programmatic Agreement
Among
The U.S. Department of Energy, National Nuclear Security Administration,
Los Alamos Site Office,
The New Mexico State Historic Preservation Office
And
The Advisory Council for Historic Preservation
Concerning Management of the Historic Properties of
Los Alamos National Laboratory, New Mexico
LA-UR-06-1975

WHEREAS, this Programmatic Agreement (PA) replaces the previous PA dated April 26, 2000 (MOU DE-GM32-00AL77152);

WHEREAS, the U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office (LASO) has responsibility for the management of all historic properties at Los Alamos National Laboratory (LANL) that have either been determined eligible for listing in the National Register of Historic Places (Register) or are awaiting eligibility assessments, pursuant to Section 110 of the National Historic Preservation Act (NHPA) as amended, and must assess the effect of any Federal undertaking upon historic properties included in, eligible for, or properties with undetermined eligibility for the Register pursuant to Section 106 of the NHPA;

WHEREAS, LASO has determined that the mission of LANL as a scientific laboratory, with its associated operation, maintenance, research, development, waste management, and decontamination-decommissioning activities, may have both direct and indirect effects on historic properties;

WHEREAS, LASO has a cultural resource program manager and LANL has a qualified staff of cultural resource specialists who meet the qualifications set forth in the Secretary of the Interior's Standards and Guidelines for Professional Qualifications (36 CFR Part 61), or work under the supervision of individuals who meet these qualifications;

WHEREAS, LASO recognizes the potential affect of mission activities on archaeological sites, sacred places and traditional use areas that are affiliated with Native American and Hispanic peoples;

NOW, THEREFORE, LASO, the State Historic Preservation Office (SHPO), and the Advisory Council for Historic Preservation (ACHP) agree that LASO and LANL activities that have the potential to affect historic properties shall be administered in accordance with the Stipulations of this Programmatic Agreement to satisfy LASO's responsibilities under Sections 106 and 110 of the NHPA. For purposes of this PA, the term "including" shall mean "including but not limited to." For the purposes of this PA,

the term “historic properties” shall mean all properties, archaeological sites, traditional cultural properties, standing structures, buildings, associated records and artifacts that are included in, eligible for, or have not yet been evaluated for the Register.

STIPULATIONS

I. The Cultural Resources Management Plan (CRMP)

- A. The LASO will manage historic properties at LANL in accordance with its CRMP *A Plan for the Management of the Cultural Heritage at Los Alamos National Laboratory, New Mexico*, developed from guidance contained in the *Environmental Guidelines for Development of Cultural Resource Management Plans* (August 1995, DOE/EH-0501).
- B. The scope of the LANL CRMP includes:
 1. Part I: Background (Sections 1-6), which contains the purpose of the CRMP, applicable historic preservation laws, regulations, guidelines and policies, glossary, environmental setting and culture history.
 2. Part II: National Historic Preservation Act (NHPA) Compliance (Section 106) reviews and Section 106 compliance process (Sections 7-11). Key provision include:
 - Section 9: Historic building/structure property types exempt from Section 106.
 - Section 9: Annual reporting to SHPO of no property-no effect undertakings.
 - Section 9: Review of LANL undertakings pursuant to 36 CFR 800.4-800.6.
 - Section 9: Procedural exceptions regarding “adverse effect” undertakings. 1) Resolution of adverse effects to surface prehistoric artifact scatters and historic trash scatters, and 2) Resolution of adverse effects to historic buildings and structures (not including “exceptionally significant” properties, which will be reviewed on a case by case basis).
 - Section 10: Methods and procedures for post-1942 historic buildings management.
 - Section 11: Methods and procedures for archaeological resources management.
 3. Part III: National Historic Preservation Act Compliance (Section 110) and the Section 110 compliance process (Sections 12-16). Key sections include:
 - Section 13: Archaeological survey.
 - Section 14: Curation of federally owned and administered collections. (36 CFR Part 79)
 - Section 15: Potential National Historic Landmarks.
 - Section 16: Potential National Register Districts.

4. Part IV: Native American Consultation and Outreach discusses the consultation process.
 - Section 17: Cultural affiliation, traditional cultural properties and the Native American Graves and Repatriation Act.
 5. Part V: Strategic Planning and Long-Term Management Issues and Goals presents a 10-year management plan for LANL (Sections 18-22). Key sections include:
 - Section 19: Prioritization strategy for register eligible determinations.
 - Section 20: Site monitoring and protection.
 - Section 21: Public education and outreach.
 - Section 22: Procedures of emergency situations.
 6. Part VI: Safety, Security and Assurance summarize the steps taken to make sure that all field, laboratory and office work is conducted in a safe and secure manner (Sections 23-25).
 7. Appendix A contains the 10-year plan.
 8. Appendix B contains an annotated list of documents that support the LANL cultural resource program.
- D. The LASO shall consult with the SHPO and the ACHP if LASO proposes changes to the CRMP.

II. Data Sharing

- A. The LASO will maintain spatial and tabular site and survey data in its corporate database and GIS systems, and will provide information in a compatible format to the statewide database maintained by SHPO on a biannual basis.
- B. The LASO and the SHPO will ensure that site locations and other confidential information are protected and made available only to qualified persons in accordance with state and federal guidelines, including Section 304 of NHPA and Section 9 of the Archaeological Resources Protection Act (ARPA).

III. American Indian Involvement in Consultation

The LASO will consult on a Government-to-Government basis with those Native American tribes determined to be culturally affiliated with LANL Lands as defined in Part IV Section 17 of the CRMP for matters pertaining to the NHPA (except as noted below), the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, and the American Indian Religious Freedom Act. Additional tribes may be consulted at the discretion of LASO and as warranted by individual circumstances. NHPA Section 106 actions pertaining to the modification, decommissioning, or demolition of post-1942 historic buildings and structures will be exempted from tribal consultation unless there is the potential to affect Native American cultural resources or by the specific request of a tribe.

IV. Interested Person Participation

- A. The LASO will seek and consider views of the public in carrying out the terms of this PA in a manner consistent with 36 CFR Part 800.
- B. Information concerning proposed undertakings subject to the terms of this agreement shall be made available to the Public in a way that is mutually acceptable to the parties. LASO will follow the processes as presented in *Guidance on Effective Public Participation under the National Environmental Policy Act (NEPA)*.
- C. Nothing in this PA will be interpreted as limiting or otherwise hindering cooperative efforts regarding historic preservation between LASO and other interested individuals or groups. All forms of cooperation are encouraged.
- D. The LANL Cultural Resources Council is a forum for public review of the LANL historic preservation program. The Council is composed of public citizens and representatives from local, tribal and federal governments.

V. Post-review Discovery

If historic properties are discovered or unanticipated effects on historic properties found after the Section 106 process for a proposed undertaking has been completed, LASO will follow the procedures in 36 CFR Part 800.13 with the following modifications:

If the undertaking has been approved and the construction has commenced, LASO, in consultation with the SHPO will determine the actions necessary to resolve the adverse effects. Once a mutually acceptable resolution plan has been agreed upon, LASO will notify the ACHP of the plan and provide them an opportunity to comment.

If no mutually acceptable resolution of adverse effects can be reached between LASO and the SHPO, LASO or the SHPO may ask the ACHP to participate in the consultation process.

VI. Duration of PA

- A. This PA will be effective for five (5) years from the date of signature by all parties and by mutual agreement can be extended for an additional five-year period.

VII. Agreement Review

- A. Any party may request a review of this PA. The parties will consult concerning any proposed changes. The parties may revise or amend this PA by written agreement of all parties.
- B. The SHPO may monitor activities carried out pursuant to the PA, and the ACHP may review such activities if so requested. LASO will cooperate with the ACHP and the SHPO in carrying out their monitoring and review responsibilities.

VIII. Termination

Any party to this PA may terminate it by providing 60 days notice to the other parties providing that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, LASO will comply with 36 CFR Part 800 and the CRMP.

IX. Dispute Resolution

The LASO and the SHPO shall jointly attempt to resolve any disagreement arising from implementation of this PA. If the LASO determines that the disagreement cannot be resolved, the LASO shall request the further comments of the ACHP.

Execution of this PA, and the implementation of its terms, evidences that LASO has afforded the SHPO an opportunity to comment on the effects of its activities on historic properties as defined herein, and that LASO has taken into account the effects of such undertakings on these historic properties.

U.S. DEPARTMENT OF ENERGY, NATIONAL NUCLEAR SECURITY
ADMINISTRATION, LOS ALAMOS SITE OFFICE

By:_____ Date:_____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICER

By:_____ Date:_____

THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION

By:_____ Date:_____